

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CV F 02 5003 REC SMS P

MALCOLM ANDRE YOUNG,  
  
Plaintiff,

v.

DANIELSON, et. al.,  
  
Defendants.

ORDER CONSTRUING "PLAINTIFF'S  
MOTION IN OBJECTION . . ." as "Opposition  
to MOTION FOR LEAVE TO FILE  
DISPOSITIVE MOTION (Doc. 67.)

ORDER GRANTING MOTION FOR RELIEF  
FROM SCHEDULING ORDER UNDER RULE  
16 AND LEAVE TO FILE DISPOSITIVE  
MOTION (Docs. 64, 69.)

ORDER VACATING SECOND SCHEDULING  
ORDER ISSUED FEBRUARY 16, 2005. (Doc.  
54.)

Malcolm Andre Young ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983.

**A. BACKGROUND**

On February 16, 2005, this Court issued a Second Scheduling Order setting a Telephonic Trial Confirmation Hearing for August 16, 2005, at 10:00 a.m. before the undersigned and trial for September 27, 2005, at 9:00 a.m. before District Court Judge Coyle. Plaintiff filed a timely pretrial statement on April 20, 2005. Defendant's deadline for filing a pretrial statement was

1 June 3, 2005. On May 26, 2005, Defendants moved for an extension of time to submit  
2 the pretrial statement citing a recently received injury by Defense Counsel. The request was  
3 granted and on July 7, 2005, the pretrial statement was filed.

4 On July 11, 2005, the Court issued an Order setting a deadline for the filing of Motions in  
5 Limine. The Court noted that Defendant's Pretrial Statement indicated that Defendants would  
6 seek leave to file a Motion for Summary Judgment as there are no triable issues of fact and the  
7 case is barred by the Statute of Limitations. The Court informed Defendant that the dispositive  
8 motion deadline has expired and that in order to raise such issues at this stage in the proceedings,  
9 Defendants must seek relief from the dispositive motion deadline under Rule 16 of the Federal  
10 Rules of Civil Procedure. However, also on July 11, 2005, and just prior to the Court's issuance  
11 of its order noting Defendant's intentions, Defendant filed a "Request for Leave to file  
12 Dispositive Motions." The Motion consisted of Defense Counsel's Declaration which asserted  
13 only that there were no triable issues of fact and that this was discovered only upon examination  
14 of Plaintiff's Pretrial Statement. Defense Counsel adds that he sustained injuries from a "non-  
15 auto" accident and has been unable to work full time since May 3, 2005.

16 On July 15, 2005, the Court issued an Order requiring Defendants to provide further  
17 briefing on the Request for Leave to file a Dispositive Motion. The Court noted that the  
18 information provided was insufficient to find "good cause" under Rule 16. In addition, the  
19 Request made inconsistent statements with those made in Defendant's Pretrial Statement.

20 On July 27, 2005, Plaintiff filed a pleading titled "Motion in Objection to Defendant's  
21 Request for Leave to File a Dispositive Motion"<sup>1</sup> and Declaration in Support of the Motion.  
22 (Docs. 67, 68.) Plaintiff indicates in his pleadings that Defendants failed to serve him with the  
23 Request for Leave to file a Dispositive Motion.

24 Defendants filed a second Notice of Motion and Motion to Modify the Scheduling Order  
25 under Rule 16 on July 27, 2005, in response to the Court's Order and properly served Plaintiff  
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27 <sup>1</sup>Although inappropriately captioned as a "Motion," this pleading forms the basis of Plaintiff's Opposition  
28 to the Motion seeking modification of the scheduling order. Thus, the Court will construe it as Plaintiff's Opposition  
to the Motion to Modify the Second Scheduling Order.

1 with this Motion. On August 2, 2005, Defendants submitted a proposed Order granting the  
 2 Request to Modify the Scheduling Order.

### 3 C. ANALYSIS

4 Pursuant to Federal Rule of Civil Procedure 16(b)(2) and (3), district courts must enter  
 5 scheduling orders to establish deadlines for, among other things, “to file motions” and “to  
 6 complete discovery.” Fed.R.Civ.P. 16(b)(2), (3). Scheduling orders may also include “the date  
 7 or dates for conferences before trial, a final pretrial conference, and trial.” Fed.R.Civ.P. 16(b)(4).  
 8 “A schedule shall not be modified except upon a showing of good cause and by leave of the  
 9 district judge or, when authorized by local rule, by a magistrate judge.” Fed.R.Civ.P. 16(b). The  
 10 scheduling order “shall control the subsequent course of the action unless modified by a  
 11 subsequent order.” Fed.R.Civ.P. 16(e).

12 Scheduling orders “are the heart of case management,” Kopple v. Ford Motor Co., 795  
 13 F.2d 15, 18 (3<sup>rd</sup> Cir. 1986), and are intended to alleviate case management problems. Johnson v.  
 14 Mammoth Recreations, Inc., 975 F.2d 604, 610 (9<sup>th</sup> Cir. 1992). A “scheduling conference order  
 15 is not a frivolous piece of paper, idly entered, which can be cavalierly disregarded without peril.”  
 16 Johnson, 975 F.2d at 610. In Johnson, 975 F.2d at 609, the Ninth Circuit Court of Appeals  
 17 explained:

18 . . . Rule 16(b)’s “good cause” standard primarily concerns the diligence of the  
 19 party seeking the amendment. The district court may modify the pretrial schedule  
 20 “if it cannot reasonably be met despite the diligence of the party seeking the  
 21 extension.” Fed.R.Civ.P. 16 advisory committee’s notes (1983 amendment) . . .  
 22 Moreover, carelessness is not compatible with a finding of diligence and offers no  
 23 reason for a grant of relief. . . . [T]he focus of the inquiry is upon the moving  
 24 party’s reasons for seeking modification. . . . If that party was not diligent, the  
 25 inquiry should end.

26 Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 610 (9<sup>th</sup> Cir. 1992).

27 Parties must “diligently attempt to adhere to that schedule throughout the subsequent  
 28 course of the litigation.” Jackson v. Laureate, Inc., 186 F.R.D. 605, 607 (E.D. Cal. 1999); see  
Marcum v. Zimmer, 163 F.R.D. 250, 254 (S.D. W.Va. 1995). In addressing the diligence  
 requirement, the Court in Jackson, noted:

to demonstrate diligence under Rule 16’s “good cause” standard, the movant may  
 be required to show the following: (1) that she was diligent in assisting the Court

1 in creating a workable Rule 16 order, see In re San Juan Dupont, 111 F.3d at 228;  
2 (2) that her noncompliance with a Rule 16 deadline occurred or will occur,  
3 notwithstanding her diligent efforts to comply, because of the development of  
4 matters which could not have been reasonably foreseen or anticipated at the time  
5 of the Rule 16 scheduling conference, see Johnson, 975 F.2d at 609; and (3) that  
6 she was diligent in seeking amendment of the Rule 16 order, once it became  
7 apparent that she could not comply with the order, see Eckert Cold Storage, 943  
8 F.Supp. at 1233.

9 Jackson v. Laureate, Inc., 186 F.R.D. 605, 608 (E.D. Cal. 1999).

10 Finally, a trial court possesses “inherent power” to control its docket and calendar.

11 Landis v. North American Co., 299 U.S. 248, 254-255, 57 S.Ct. 163, 165-166 (1936);

12 Mediterranean Enterprises, Inc. v. Ssangyong Constr. Co., Ltd., 708 F.2d 1458, 1465 (9<sup>th</sup> Cir.

13 1983). A district court’s decision to deny or grant a continuance will be disturbed only upon the

14 “clearest showing” of “actual and substantial prejudice to the complaining litigant.” Martel v.

15 County of Los Angeles, 56 F.3d 993, 995 (9<sup>th</sup> Cir. 1995) (*citing Sablan v. Department of Fin.*,

16 856 F.2d 1317, 1321 (9<sup>th</sup> Cir. 1988).

17 In this case, Defendants move for relief from the Court’s scheduling order on the grounds  
18 that Plaintiff’s Second Amended Pretrial Statement, filed on May 5, 2005, reveals that Plaintiff  
19 intends to produce no expert witnesses and therefore, cannot establish the necessary elements of  
20 his claims for relief. This action is proceeding on Plaintiff’s Second Amended Complaint  
21 alleging that the Defendants were deliberately indifferent to Plaintiff’s serious medical needs in  
22 violation of the Eighth Amendment. The allegations concern a series of events that have taken  
23 place over the prior ten years at several different prisons but essentially allege that Plaintiff was  
24 denied adequate medical treatment by several different medical doctors at California Correctional  
25 Institution in Tehachapi, California. Defendants also note that Plaintiff’s pretrial statement of  
26 facts would entitle some or all of the Defendants to judgment as a matter of law.

27 In Opposition, Plaintiff complains that the Motion for Relief was not served on him.  
28 However, the filing of the subsequent Motion on July 27, 2005, *was* served on Plaintiff and thus,  
corrected any error on Defendant’s part regarding service. Plaintiff also states that Defendants  
statements regarding his injuries are inconsistent and occurred well after the dispositive motion  
deadline. Thus, it cannot serve as justification for modification of the Scheduling Order.

1 Plaintiff points out that Defendant's Request for an Extension of time to file a Pretrial Statement  
2 stated that Counsel received injuries from an "automobile accident," whereas the Motion to  
3 Modify states that the injuries stemmed from a "non-auto" accident. (Opposition at 2.) The  
4 Court has reviewed the Request for an Extension of time to file a Pretrial Statement and finds  
5 that Plaintiff's assessment of what Counsel said incorrect. The Request for an Extension states  
6 that Counsel was involved in an "accident." (Doc. 60.) Plaintiff presumes by this, Counsel  
7 means auto accident. However, there is nothing in the Request to indicate that the accident was  
8 an auto accident. In any event, Counsel's accident is irrelevant to the Request for Modification  
9 of the Scheduling Order as Counsel does not base his request to modify on the accident or his  
10 absence from work. Both requests clearly indicate that Counsel discovered Defendant's  
11 entitlement to Judgment as a matter of law only after reviewing Plaintiff's pretrial statement.  
12 (Docs 64, 69.) As review of the pretrial statement could only occur *after* the expiration of the  
13 dispositive motion deadline, Defendant's Request for Modification is properly made.

14 Having reviewed the Request for Modification, accompanying declaration and Opposition  
15 and Declaration of Plaintiff, the Court finds Defendants present good cause for relief from the  
16 Court's Second Scheduling Order under Rule 16. Defendants provide evidence that they  
17 discovered facts that might entitled Defendants to Judgment as a matter of law only after Plaintiff  
18 submitted his pretrial statement and after the expiration of the dispositive motion deadline. Other  
19 than his allegations of inconsistent statements regarding Counsel's "accident," Plaintiff presents  
20 no justification why relief from the Order should not be granted. As noted above, a trial court  
21 possesses "inherent power" to control its docket and calendar. Landis v. North American Co.,  
22 299 U.S. 248, 254-255, 57 S.Ct. 163, 165-166 (1936); Mediterranean Enterprises, Inc. v.  
23 Ssangyong Constr. Co., Ltd., 708 F.2d 1458-1465 (9<sup>th</sup> Cir. 1983). Here, in addition to the good  
24 cause shown, the Court finds the interests of judicial economy require granting Defendants relief  
25 from the Second Scheduling Order. Allowing Defendants to file a dispositive motion at this time  
26 would, at the very least, streamline the triable issues and number of Defendants in the case and at  
27 most, preserve judicial resources and resolve the case prior to the any impanelment of jurors.

28 **C. ORDER**

Accordingly, in light of all of the above, the Court HEREBY ORDERS:

1. Plaintiff's "Motion in Objection . ." is CONSTRUED as an Opposition to the Motion to Modify Scheduling Order.
2. The Motion to Modify the Scheduling Order under Rule 16 is GRANTED. Defendant's dispositive motion is due within **THIRTY (30) DAYS** of the date of service of this Order.
3. The Court's Second Scheduling Order issued February 16, 2005, setting the matter for a Trial Confirmation hearing on August 16, 2005, at 10:00 a.m. before the undersigned, and Jury Trial on September 27, 2005, at 9:00 a.m. before the Honorable Robert E. Coyle, is VACATED.

Defendants are forewarned that the failure to file a dispositive motion within the time frame allotted will cause the Court to issue a Third Scheduling Order setting the matter for trial.

IT IS SO ORDERED.

Dated: August 3, 2005  
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/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE